

ILLINOIS REGISTER  
DEPARTMENT OF REVENUE  
NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Income Tax
- 2) Code Citation: 86 Ill. Adm. Code 100
- 3) Section Number: 100.5060                      Proposed Action: New Section
- 4) Statutory Authority: 35 ILCS 5/501(b)
- 5) A Complete Description of the Subjects and Issues Involved: Section 501(b) of the IITA requires taxpayers to disclosure to the Department participation in a reportable transaction. A "reportable transaction" is any transaction that must be disclosed under Treasury Regulations Section 1.6011-4, and includes any listed transaction that is required to be disclosed under Treasury Regulation Section 1.6011-4T or 1.6011-4. In general, disclosure is made by furnishing the Department a copy of the federal disclosure statement. This rulemaking implements the provisions of IITA Section 501(b).
- 6) Will this proposed amendment replace an emergency rule currently in effect? Yes
- 7) Does this rulemaking contain an automatic repeal date? No
- 8) Does this proposed amendment contain incorporations by reference? No
- 9) Are there any other proposed amendments pending on this Part? Yes

<u>Section Numbers</u>	<u>Proposed Action</u>	<u>IL Register Citation</u>
100.9030	New Section	28 Ill. Reg. 4091, 03/05/04
100.9040	New Section	28 Ill. Reg. 4091, 03/05/04
100.9050	New Section	28 Ill. Reg. 4091, 03/05/04
100.9060	New Section	28 Ill. Reg. 4091, 03/05/04
100.9700	Amendment	28 Ill. Reg. 4509, 03/12/04
100.2196	New Section	28 Ill. Reg. 12778, 09/17/04
100.9900	New Section	28 Ill. Reg. 14090, 10/29/04

- 10) Statement of Statewide Policy Objectives: This rulemaking does not create a State mandate, nor does it modify any existing State mandates.
- 11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Persons who wish to submit comments on this proposed rulemaking may submit them in writing by no later than 45 days after publication of this notice to:

Brian Stocker  
Staff Attorney - Income Tax  
Illinois Department of Revenue  
Legal Services Office  
101 West Jefferson  
Springfield, Illinois 62794

12) Initial Regulatory Flexibility Analysis:

- A) Types of small businesses, small municipalities and not-for-profit corporations affected: This rulemaking affects any taxpayer that participates in a reportable transaction and is required to file a federal disclosure statement.
- B) Reporting, bookkeeping or other procedures required for compliance: This rulemaking requires taxpayers that participated in a reportable transaction to furnish the Department a copy of the federal disclosure statement associated with that transaction. Therefore, this rulemaking does not impose significant additional reporting, bookkeeping or other procedures required for compliance.
- C) Types of professional skills necessary for compliance: No new skills are required.

13) Regulatory Agenda on which this rulemaking was summarized: July 2004

The full text of the Proposed Amendment is identical to the text of the Emergency Amendment on page \_\_\_\_\_ of this issue of the Illinois Register.

SUBPART N: TIME AND PLACE FOR FILING RETURNS

**Section 100.5060 Reportable Transactions**

a) Requirement to Disclose Participation in Reportable Transactions.

1) In general. For each taxable year in which a taxpayer is required to make a disclosure statement under Treasury Regulations Section 1.6011-4 with respect to a reportable transaction in which the taxpayer participated in a taxable year for which a return is required under IITA Section 502, the taxpayer shall file a copy of such disclosure with the Department. (IITA § 501(b)) A copy of such disclosure shall be filed at the time and in the manner provided under subsection (b) of this Section.

2) Definitions. For purposes of this Section:

A) Reportable Transaction. A "reportable transaction" is any transaction that must be disclosed under Treasury Regulations Section 1.6011-4, and shall include any listed transaction that is required to be disclosed under Treasury Regulation Section 1.6011-4T or 1.6011-4 as of the earlier of the date disclosure is required under subsection (b)(1) of this Section or the date the taxpayer files its return to which such disclosure would need to be attached.

B) Listed Transaction. A "listed transaction" is any transaction entered into after February 28, 2000 that is the same as or substantially similar to one of the types of transactions that the IRS has identified by notice, regulation, or other form of published guidance as a listed transaction and that is required to be disclosed under Treasury Regulation Section 1.6011-4T or 1.6011-4.

b) Time and Manner for Making Disclosure

1) Time for Making Disclosure. Disclosure under this Section must be made by the due date (including extensions) of the return to which the disclosure statement must be attached as provided in this subsection, unless the date in which disclosure is required for federal income tax purposes for the same transaction is later, in which case disclosure must be made no later than the date in which disclosure is required for federal income tax purposes.

2) General Manner for Making Disclosure.

A) Taxable years ending before December 31, 2004. In the case of a reportable transaction as to which disclosure is required for federal income tax purposes on a return filed for a taxable year ending before December 31, 2004:

i) In general. A copy of such federal income tax disclosure shall be attached to the return required under IITA Section 502 for the first taxable year for which a return is due (without regard to extensions) on or after July 30, 2004. The taxpayer may elect to attach a copy of such disclosure to the return for an earlier taxable year. In addition, a second copy of the federal income tax disclosure must be sent to the Department at an address designated by the Department for this purpose at the same time that disclosure is filed as required herein. In any case where disclosure is attached to a return and such disclosure relates to a transaction disclosed for federal income tax purposes for a taxable year other than the taxable year for which the Illinois return is made, the taxpayer must indicate on such disclosure the taxable year for which such disclosure was made for federal income tax purposes.

ii) When No Return is Due on or after July 30, 2004. If no return is required to be filed under Section 502 on or after July 30, 2004, the taxpayer shall file a copy of the federal income tax disclosure no later than the due date (including extensions) for the first return it would have been required to file (without regard to extensions) on or after July 30, 2004, had it continued to be required to file returns and continued using the same taxable year it used when it was last required to file an Illinois return. In addition, a second copy of the federal income tax disclosure must be sent to the Department at an address designated by the Department for this purpose at the same time that disclosure is filed as required herein.

Example. Corporation A was required under Treasury Regulations Section 1.6011-4 to disclose reportable transactions by attaching Form 8886 and Schedule M-3 to its federal income tax return for its taxable year ending March 31, 2003. Corporation A may elect to attach copies of the Form 8886 and the Schedule M-3 to its Illinois income tax return for its taxable year ending March 31, 2004, and send a second copy of the Form 8886 and Schedule M-3 to the address designated by the Department. If it does not make this election, Corporation A is required to attach copies of the Form 8886 and the Schedule M-

3 to its Illinois income tax return for the taxable year ending March 31, 2005, which is the first return for which the unextended due date falls on or after July 30, 2004. At the same time, Corporation A must send a second copy of the Form 8886 and Schedule M-3 to the address designated by the Department. In either case, Corporation A must indicate that the Form 8886 and the Schedule M-3 relate to its March 31, 2003, taxable year.

If Corporation A is not required to file an Illinois income tax return due on or after July 30, 2004, then it must file copies of its Form 8886 and Schedule M-3 with the Department by the due date (including extensions) that its March 31, 2005 return would have been required to be filed. Corporation A should indicate that the Form 8886 and Schedule M-3 relate to its March 31, 2003 taxable year.

B) Taxable years ending on and after December 31, 2004. In the case of a reportable transaction as to which disclosure is required for federal income tax purposes on a return filed for a taxable year ending on and after December 31, 2004, a copy of such disclosure shall be attached to the taxpayer's return required under IITA Section 502 for the same taxable year. In addition, a second copy of the federal income tax disclosure must be sent to the Department at an address designated by the Department for this purpose at the same time that disclosure is filed as required herein.

3) Special Rules for Making Disclosure of Certain Listed Transactions

A) If a return is not required under IITA Section 502 for a taxable year in which a disclosure statement is required to be attached to a return pursuant to the special rule for listed transactions under Treasury Regulations Section 1.6011-4(e)(2), the taxpayer must file a copy of such disclosure with the Department if disclosure would have been required under IITA Section 501(b) and this Section if the transaction had been listed at the time the taxpayer filed its return reflecting either the tax consequences or a tax strategy described in the published guidance listing the transaction (or a tax benefit derived from tax consequences or a tax strategy described in the published guidance listing the transaction). A copy of such disclosure must be filed no later than the due date (including extensions) for the first return the taxpayer would have been required to file (without regard to extensions) on or after the date the transaction became a listed transaction, had the taxpayer continued to be required to file returns and continued using the same taxable year it used when it was last required to file an Illinois return.

B) If a return is not required under Section 502 for a taxable year in which a disclosure statement is required to be attached to a return pursuant to Treasury Regulations Section 1.6011-4T with respect to a transaction that becomes a listed transaction on or after the date the taxpayer has filed its return for the first taxable year for which the transaction affected the taxpayer's or a partner's or a shareholder's Federal income tax liability, the taxpayer must file a copy of such disclosure with the Department if disclosure would have been required under IITA Section 501(b) and this Section if the transaction had been listed at the time the taxpayer filed its return for a taxable year for which the transaction affected the taxpayer's

or a partner's or shareholder's Federal income tax liability. A copy of such disclosure must be filed no later than the due date (including extensions) for the first return the taxpayer would have been required to file (without regard to extensions) on or after the date the transaction became a listed transaction, had the taxpayer continued to be required to file returns and continued using the same taxable year it used when it was last required to file an Illinois return.

- 4) Making Disclosure of Items Disclosed under Treasury Regulations Section 1.6011-4(f)(1). If the Internal Revenue Service determines that a taxpayer's submission of a request for ruling under Treasury Regulations Section 1.6011-4(f)(1) satisfies the disclosure rules, such submission shall also satisfy the requirements of IITA Section 501(b) if the taxpayer provides the Department with a copy of the internal revenue ruling by the later of the date on which disclosure is otherwise required under this Section or 60 days after the date the ruling is issued.

c) Special Rules for Certain Taxpayers

- 1) Members of a Combined Group. Whenever a disclosure statement is required to be made by any member of a combined group under Treasury Regulations Section 1.6011-4T or Section 1.6011-4 and this Section with respect to any taxable year of such member that is taken into account in computing the group's combined net income for the common taxable year under IITA Section 502(e) and Subpart P of this Part, a copy of such disclosure shall be filed as required under this Section for each such common taxable year. If a member of a combined group is required to file a disclosure statement under subparagraph (b)(2)(A) or paragraph (b)(3) of this Section with respect to a taxable year during which it was not a member of the combined group, a copy of such disclosure shall be filed with the combined return. The designated agent should indicate that such statement relates to a separate return year of the member and indicate the taxable year to which such disclosure relates.
- 2) Members of a Consolidated group. In the case of a taxpayer that is a member of an affiliated group of corporations filing a consolidated income tax return for the taxable year for federal income tax purposes and that is required to make a disclosure statement under Treasury Regulations Section 1.6011-4T or Section 1.6011-4 and this Section, a copy of such disclosure shall be filed as required under this Section if, taking into account the rule of IITA Section 203(e)(2)(E), the taxpayer would be considered to have participated in the transaction for federal income tax purposes.
- 3) Members of a Unitary Business Group. Regardless of whether or not a disclosure statement is otherwise required of a taxpayer under this Section, any taxpayer that is a member of a unitary business group that includes another member that is required to make a disclosure statement under Treasury Regulations Section 1.6011-4T or Section 1.6011-4, with respect to any taxable year of such other member that is taken into account by the taxpayer in computing its Illinois net income under IITA Sections 202 and 304(e), must file a copy of such disclosure statement with the return for each such taxable year.

- 4) Composite Returns. If a taxpayer is required to make a disclosure under this Section with respect to a transaction engaged in during the taxable year by a partnership or Subchapter S corporation in which the taxpayer is a partner or shareholder, the taxpayer's obligation to make disclosure with respect to such transaction shall be met if the disclosure is made by the partnership or Subchapter S corporation on a timely composite return that includes the taxpayer.
- d) Exceptions. No disclosure is required with respect to a reportable transaction to the extent provided in this subsection.
- 1) A reportable transaction entered into after February 28, 2000 and before January 1, 2005 is not required to be disclosed if, before the time in which disclosure is otherwise required under IITA Section 501(b) and this Section, the taxpayer has filed an amended Illinois income tax return reporting Illinois net income and tax liability computed without the tax benefits of such reportable transaction.
- 2) A reportable transaction entered into after February 28, 2000 and before January 1, 2005 is not required to be disclosed if, as a result of a federal audit, the Internal Revenue Service has made a determination with respect to the tax benefits of such reportable transaction and, before the time in which disclosure is otherwise required under IITA Section 501(b) and this Section, the taxpayer has filed an amended Illinois income tax return reporting Illinois net income and tax liability computed without the tax benefits of such reportable transaction other than the benefits determined to be allowable by the Internal Revenue Service.
- 3) A reportable transaction is not required to be disclosed if, prior to the time in which disclosure is otherwise required under IITA Section 501(b) and this Section, the taxpayer has properly filed an application with the Internal Revenue Service for a change in method of accounting pursuant to a determination by the Internal Revenue Service that such change is necessary to reflect to the proper tax treatment of the transaction.
- 4) A reportable transaction is not required to be disclosed under this Section on the basis that the transaction is a listed transaction if, prior to the time in which disclosure is otherwise required under IITA Section 501(b) and this Section, the Internal Revenue Service has removed the identification of transactions that are the same as or substantially similar to the transaction as listed transactions.
- 5) A reportable transaction is not required to be disclosed if, before the time in which disclosure is otherwise required under IITA Section 501(b) and this Section, the Department makes a determination by published guidance that a particular transaction or type of transaction is not required to be disclosed, notwithstanding that disclosure is required for the same transaction or type of transaction under Treasury Regulations Section 1.6011-4T or Section 1.6011-4.
- 6) Disclosure is not required under IITA Section 501(b) and this Section with respect to any transaction in which the requirements of Treasury Regulations Section 1.6011-4 are deemed satisfied pursuant to Treasury Regulations Section 1.6011-4(f)(3).

- e) Protective disclosure. If a taxpayer participates in a reportable transaction with respect to a taxable year in which a return is not filed under IITA Section 502, the taxpayer may disclose the transaction in accordance with the provisions of this Section, and indicate on the disclosure statement the taxpayer's position that a return is not required for the taxable year and that disclosure is being made on a protective basis. Disclosure made under this subsection (e) shall be deemed to meet the requirements of Section 501(b).

(Source: Added by emergency rulemaking at 28 Ill. Reg. \_\_\_\_\_, effective November 29, 2004, for a maximum of 150 days)